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SENATE BILL NO. 680

Offered January 26, 2012

A *BILL to amend and reenact §§ 58.1-439.18 and 58.1-439.20 of the Code of Virginia, relating to the Neighborhood Assistance Act tax credits.*

Patron—Wagner

Unanimous consent to introduce

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.18 and 58.1-439.20 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.18. Definitions.

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26. "Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3.

"Commissioner of the State Department of Social Services" means the Commissioner of the State Department of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to an individual who is impoverished.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means individuals with family annual income not in excess of 200 percent of the current poverty guidelines for proposals submitted by a nonprofit entity requesting an allocation of tax credits under this article. *The term "impoverished people" shall also include any resident of a nursing home or assisted living facility who is a Medicaid recipient.*

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

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59 "Professional services" means any type of personal service to the public that requires as a condition
60 precedent to the rendering of such service the obtaining of a license or other legal authorization and
61 shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists,
62 architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

63 "Scholastic assistance" means (i) counseling or supportive services to elementary school, middle
64 school, secondary school, or postsecondary school students or their parents in developing a
65 postsecondary academic or vocational education plan, including college financing options for such
66 students or their parents, or (ii) scholarships.

67 § 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

68 A. Any neighborhood organization may submit a proposal, other than education proposals, to the
69 Commissioner of the State Department of Social Services requesting an allocation of tax credits for use
70 by business firms making donations to the neighborhood organization. Neighborhood organizations may
71 submit education proposals to the Superintendent of Public Instruction requesting an allocation of tax
72 credits for use by business firms making donations to the neighborhood organization.

73 The proposal shall set forth the program to be conducted by the neighborhood organization, the
74 impoverished people to be assisted, the estimated amount to be donated to the program, and the plans
75 for implementing the program.

76 B. The State Board of Social Services and the Board of Education are hereby authorized to adopt
77 regulations (or, alternatively, guidelines in the case of the Board of Education) for the approval or
78 disapproval of such proposals by neighborhood organizations and for determining the value of the
79 donations. Such regulations or guidelines shall contain a requirement that an annual audit, review, or
80 compilation as required by OMB Circular No. A-133 as may be applicable to nonprofit organizations be
81 provided by the neighborhood organization as a prerequisite for approval. Such regulations or guidelines
82 shall also provide that at least ~~50~~ 40 percent of the persons served by the neighborhood organization are
83 impoverished people as defined in § 58.1-439.18. Such regulations or guidelines shall provide for the
84 equitable allocation of the available amount of tax credits among the approved proposals submitted by
85 neighborhood organizations. The regulations or guidelines shall also provide that at least 10 percent of
86 the available amount of tax credits each year shall be allocated to qualified programs proposed by
87 neighborhood organizations not receiving allocations in the preceding year; however, if the amount of
88 tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent
89 of the available amount of tax credits, the unallocated portion of such 10 percent of the available
90 amount of tax credits shall be allocated to qualified programs proposed by other neighborhood
91 organizations.

92 C. If the Commissioner of the State Department of Social Services or the Superintendent of Public
93 Instruction approves a proposal submitted by a neighborhood organization, the organization shall make
94 the allocated tax credit amounts available to business firms making donations to the approved program.
95 A neighborhood organization shall not assign or transfer an allocation of tax credits to another
96 neighborhood organization without the approval of the Commissioner of the State Department of Social
97 Services or the Superintendent of Public Instruction, as applicable.

98 Notwithstanding any other provision of law, (i) no more than an aggregate of \$0.5 million in tax
99 credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of
100 neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of
101 \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a
102 grouping of neighborhood organization affiliates for all other proposals combined.

103 D. The total amount of tax credits granted for programs approved under this article for each fiscal
104 year shall not exceed \$11.9 million allocated as follows: \$4.9 million for education proposals for
105 approval by the Superintendent of Public Instruction and \$7 million for all other proposals for approval
106 by the Commissioner of the State Department of Social Services. If the amount of tax credits requested
107 by neighborhood organizations and approved by the Superintendent for education proposals is less than
108 \$4.9 million, then the balance of such amount shall be allocated to programs for approval by the
109 Commissioner of the State Department of Social Services. The Superintendent and the Commissioner of
110 the State Department of Social Services shall work cooperatively for purposes of ensuring that
111 neighborhood organization proposals are submitted to the proper state agency. The Superintendent and
112 the Commissioner of the State Department of Social Services may request the assistance of the
113 Department of Taxation for purposes of determining whether or not anticipated donations for which tax
114 credits are requested by a neighborhood organization likely qualify as a charitable donation under federal
115 tax laws and regulations.

116 E. Actions of (i) the State Department of Social Services, or the Commissioner of the same, or (ii)
117 the Superintendent or the Department of Education relating to the review of neighborhood organization
118 proposals and the allocation of tax credits to proposals shall be exempt from the provisions of the
119 Administrative Process Act (§ 2.2-4000 et seq.). Decisions of (a) the State Department of Social
120 Services, or the Commissioner of the same, or (b) the Superintendent or the Department of Education

121 shall be final and not subject to review or appeal.

122 F. The issuance of tax credits under this article shall expire on July 1, 2014.

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